

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Charlie Hartford	Team: Squad #8	CCRB Case #: 201810050	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 11/25/2018 9:09 PM	Location of Incident: White Plains Road and Saint Ouen Street	Precinct: 47	18 Mo. SOL 5/25/2020	EO SOL 1/9/2021	
Date/Time CV Reported Sun, 11/25/2018 9:15 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 12/03/2018 9:48 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Matthew Disilvestre	15513	960466	047 PCT
2. SGT Robert Zeitoun	03552	947631	047 PCT
3. Officers			047 PCT
4. An officer			047 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Daniel Collazo	21266	962988	047 PCT
2. POM Giuseppe Gentile	09948	952773	047 PCT
3. POM Eugene Urman	19573	959324	047 PCT
4. POM Josue Batista	21940	962943	047 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Matthew Disilvestre	Force: Police Officer Matthew Disilvestre used physical force against § 87(2)(b)	
B.SGT Robert Zeitoun	Force: Sergeant Robert Zeitoun used physical force against § 87(2)(b)	
C. An officer	Force: An officer used physical force against § 87(2)(b)	
D.SGT Robert Zeitoun	Discourtesy: Sergeant Robert Zeitoun spoke discourteously to § 87(2)(b)	
E. Officers	Force: Officers used physical force against § 87(2)(b)	
F. Officers	Force: Officers used a chokehold against § 87(2)(b)	
§ 87(4-b), § 87(2)(g)		

Case Summary

On November 25, 2018, § 87(2)(b) filed this complaint with IAB via phone under original log #18-46151. On December 3, 2018, this complaint was received by the CCRB.

On November 25, 2019, at approximately 9:09 p.m., in the vicinity of White Plains Road and Saint Ouen Street in the Bronx, Police Officer Matthew Disilvestre of the 47th Precinct used force against § 87(2)(b) (**Allegation A: Force**, § 87(2)(g)). Sergeant Robert Zeitoun of the 47th Precinct and an unidentified officer allegedly used physical force against § 87(2)(b) (**Allegations B and C: Force**, § 87(2)(g)). Sgt. Zeitoun allegedly spoke discourteously to § 87(2)(b) (**Allegation D: Discourtesy**, § 87(2)(g)). Officers allegedly threw § 87(2)(b) into a police car and placed him in a chokehold (**Allegations E and F: Force**, § 87(2)(g)). § 87(2)(b) was arrested during the incident.

This case contains body-worn camera footage (Board Reviews 05-15), as well as surveillance footage obtained from the Kennedy Fried Chicken located at 4718 White Plains Road in the Bronx (Board Reviews 16-20).

Findings and Recommendations

Allegation (A) Force: Police Officer Matthew Disilvestre used physical force against § 87(2)(b)

It is undisputed that Sgt. Zeitoun and PO Daniel Collazo, also of the 47th Precinct, stopped and, after approximately 20 minutes, arrested § 87(2)(b) based on an open I-Card (Board Review 33). § 87(2)(b)'s girlfriend, § 87(2)(b), who was visibly pregnant, was present during the arrest.

In her initial complaint to IAB, § 87(2)(b) alleged being pushed by an unidentified officer. The investigation was unable to obtain a sworn statement from § 87(2)(b) (Board Review 04).

On March 27, 2019, the investigation obtained a statement over video teleconference from § 87(2)(b) while he was incarcerated at Riker's Island, which contained no mention of this allegation (Board Review 01).

In his CCRB interview, PO Disilvestre stated that at approximately 8:30 p.m. he responded to White Plains Road and Saint Ouen Street in the Bronx in response to a call for additional units (Board Review 03). PO Disilvestre did not have any additional information prior to his arrival on scene, and did not know why § 87(2)(b) was being arrested. On scene, PO Disilvestre observed Sgt. Zeitoun and numerous officers surrounded by a screaming, angry crowd of between 30-40 people. § 87(2)(b) was screaming at Sgt. Zeitoun and waving her arms around six inches from his face. Sgt. Zeitoun calmly asked § 87(2)(b) to get back several times, which she did not do. § 87(2)(b) represented a safety concern as she was unacceptably close to Sgt. Zeitoun and because of her hand movements. Without saying anything, PO Disilvestre grabbed § 87(2)(b) by the arms and moved her back approximately two feet away from the officers. There were no additional reasons why PO Disilvestre moved § 87(2)(b) back in this manner. PO Disilvestre denied observing that § 87(2)(b) was pregnant during the incident.

In his CCRB testimony, Sgt. Zeitoun described § 87(2)(b) as being “clearly pregnant” and denied seeing PO Disilvestre push § 87(2)(b) (Board Review 02).

This allegation is depicted by surveillance video footage (at 07:03 minutes in the footage attached to Board Review 19), as well as body-worn camera footage filmed by PO Giuseppe Gentile (00:10 minutes in the footage attached to Board Review 08). Please note the relevant footage filmed by PO Gentile was captured during the camera’s 30-second buffer period and thus contains no audio.

A video created using the Input-Ace video analysis software, consisting of these two videos synchronized with audio from PO Eugene Urman’s BWC, may be reviewed at Board Review 22.

The above-referenced composite video demonstrates that, in contradiction to PO Disilvestre’s testimony, there were less than ten individuals observing § 87(2)(b)’s arrest at the time PO Disilvestre physically engaged with § 87(2)(b). None of these individuals were screaming or appeared visibly angry prior to PO Disilvestre using force. After PO Disilvestre engages with § 87(2)(b), however, a large crowd gathers and begins screaming at the officers. Immediately prior to PO Disilvestre pushing § 87(2)(b), Sgt. Zeitoun can be heard telling § 87(2)(b) to “get on the sidewalk,” and § 87(2)(b) can be heard stating that she will do so. § 87(2)(b) is not shown waving her hands in Sgt. Zeitoun’s face, and PO Disilvestre is shown continuing to use force to move § 87(2)(b)’s body after she was standing on the sidewalk.

Patrol Guide Procedure 221-01 states force may only be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody (Board Review 23). When possible, members of service are required to use de-escalation techniques to gain voluntary compliance in lieu of using force.

In determining whether the use of force is reasonable, members of the service are instructed to consider:

- a. The nature and severity of the crime/circumstances
- b. Actions taken by the subject
- c. Duration of the action
- d. Immediacy of the perceived threat or harm to the subject, members of the service, and/or bystanders
- e. Whether the subject is actively resisting custody
- f. Whether the subject is attempting to evade arrest by flight
- g. Number of subjects in comparison to the number of MOS
- h. Size, age, and condition of the subject in comparison to the MOS
- i. Subject’s violent history, if known
- j. Presence of hostile crowd or agitators
- k. Subject apparently under the influence of a stimulant/narcotic which would affect pain tolerance or increase the likelihood of violence.

§ 87(2)(g)

§ 87(2)(g)

[REDACTED]

Allegation (B) Force: Sergeant Robert Zeitoun used physical force against § 87(2)(b)

Allegation (C) Force: An officer used physical force against § 87(2)(b)

Allegation (E) Force: Officers used physical force against § 87(2)(b)

Allegation (F) Force: Officers used a chokehold against § 87(2)(b)

In his statement provided over video-conference, § 87(2)(b) alleged that as he was handcuffed, Sgt. Zeitoun and an unidentified officer slammed his body against the hood of a vehicle while his hands were behind his back (Board Review 01). Officers then allegedly lifted § 87(2)(b) into the air and threw him into the vehicle, causing him to hit his head against the door on the other side of the car. § 87(2)(b) had a seizure, at which time an officer on the left side placed § 87(2)(b) a “full blown headlock” as if he was trying to “put § 87(2)(b) to sleep,” while an officer on the right side grabbed § 87(2)(b)’s feet, playing “tug-o-war” with § 87(2)(b) for two or three minutes before finally removing § 87(2)(b) from the vehicle. § 87(2)(b) lost consciousness and awoke eight hours later in the hospital. § 87(2)(b) acknowledged having a history of seizures prior to this incident, which can be triggered by anxiety among other causes.

Both Sgt. Zeitoun and PO Disilvestre denied observing officers use the alleged force (Board Review 02 and 03).

A review of PO Urman’s BWC (Board Review 05) from 20:00 minutes on, as well as the surveillance footage attached to Board Review 19 from 07:02 minutes on, indicates that § 87(2)(b) was not slammed against the hood of a vehicle with his hands behind his back, and that officers did not throw § 87(2)(b) into the vehicle in the manner alleged. At 02:04 minutes in PO Gentile’s BWC (Board Review 07), § 87(2)(b) appears to have a seizure; however, officers are depicted removing § 87(2)(b) in short order and promptly requesting an ambulance, as opposed to engaging in an extended “tug-o-war” whilst placing § 87(2)(b) in a headlock or chokehold as alleged.

§ 87(2)(g)

[REDACTED]

Allegation (D) Discourtesy: Sergeant Robert Zeitoun spoke discourteously to § 87(2)(b)

[REDACTED]

In his statement provided over video teleconference, § 87(2)(b) alleged that Sgt. Zeitoun stated either, “Aw, fuck him,” or, “Fuck that,” as he was being handcuffed (Board Review 01).

A review of PO Urman’s BWC from the 20:09 minute mark on indicates that Sgt. Zeitoun did not make this statement (Board Review 05).

§ 87(2)(g)

§ 87(4-b), § 87(2)(g)

Civilian and Officer CCRB Histories

- PO Disilvestre has been a member of service for four years. In that time, he has been the subject of four allegations in four additional cases, none of which have been substantiated. All four allegations concern physical force.
- Sgt. Zeitoun has been a member of service for 11 years. In that time, he has been the subject of 20 allegations in six additional cases, none of which have been substantiated. Sgt. Zeitoun has been the subject of three unsubstantiated physical force allegations.
- § 87(2)(b)

Mediation, Civil and Criminal Histories

- This case was not eligible for mediation.
- A FOIL request filed the with NYC Comptroller’s Office indicates that as of September 19, 2019, no Notice of Claim has been filed regarding this incident (Board Review 32).
- § 87(2)(b), § 87(2)(c) (impair contract awards or CBAs)

- § 87(2)(b), § 87(2)(c) (impair contract awards or CBAs)

Squad No.: _____

Investigator: _____

Signature	Print Title & Name	Date
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Squad Leader: _____

Signature	Print Title & Name	Date
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Reviewer: _____

Signature	Print Title & Name	Date
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